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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,570	10/26/2001	Tyler Tierney	27734/92540	4128
7590 MERONI & MERONI, P.C. P. O. BOX 309 BARRINGTON, IL 60011				
EXAMINER				
VANAMAN, FRANK BENNETT				
ART UNIT		PAPER NUMBER		
3618				
MAIL DATE		DELIVERY MODE		
10/09/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/039,570

Applicant(s)

TIERNEY ET AL.

Examiner

Frank B. Vanaman

Art Unit

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-13, 19-22, 24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-13, 19-22, 24 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 22, 2008 has been entered.

Status of Claims

2. Applicant's amendment, filed with the Request for Continued Examination, has been entered. Claims 1-5, 7-13, 19-22, 24 and 25 are pending. Claims 6, 14-18, 23 and 26 are now canceled.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-5, 7-13, 19-22, 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rue (US 4,093,252) in view of Kimmell (US 4,071,256) and Tipton (US 5,984,328). Rue teaches an in-line, two-wheeled skateboard having a substantially planar board (20 with first and second ends (see figure 1), first and second opposed truck assemblies (21, 22, 24, 25, etc.) one each truck assembly being associated with one each of the first and second ends (note figure 3), a wheel support (21, top of 22, see figure 4) pivotally associated with the board, each wheel support being pivotal about an axis orthogonal to the board face (see figure 4), each wheel support having at least wheel positioning structure (e.g. apertures at the distal end of 22), which respectively carry the wheel axles, the wheel axles mounting first and second in-line wheels (23) which have diameters and are rotatably mounted with respect to the remaining assembly (see col. 1, lines 67-68) through the forks, wherein the wheels may occupy a centered configuration (figure 2), the wheel supports including attached raked fork members (depending sloped portions of 22; note figure 2) oriented at non-orthogonal angles (see figure 3), each truck including a base portion (25) secured (26) to the board.

The reference to Rue fails to explicitly teach the wheels being maintained in a centered positions, and/or the use of an elastomeric spring element for maintaining the wheels in a centered condition, and fails to teach the mounting structure for accommodating such an elastomeric spring.

Kimmell teaches that it is well known to provide a centering device for the wheel assemblies of a skateboard so as to allow the wheels to maintain a 'usually centered' condition absent the application of force off-center by a rider, which constitutes a generally cylindrical elastomeric spring (120, figure 6) which operates to resist the pivoting of a wheel assembly including an axle (e.g., 68) from a centered equilibrium position, the forward and rearward wheel assemblies being raked in opposite directions (see figure 2), the arrangement including a housing (60, 74, 134) associated with a base (56, 57), a lug shaft (90, 92, 94, 106) engaging the base (e.g., through 76 and/or 86) and housing (at least housing portion 134), the lug shaft rigidly secured to the base when tightened, the housing (at least portion 134) being pivotably 'associated' with the lug shaft (at engagement of 94, 82, 136, 134), the lug shaft (e.g., portion 106) including an outwardly extending lug portion (116/112) forming a spline which engages with a mating keyway portion (124, 126) on the spring, each truck including an outwardly positioned hollow cylinder (78), 'associated with' the housing, the cylinder having a pair of cylinder splines (86, 88) and wherein the spring further defines at least a pair of keyways (128, 130) which receive the splines, the spring being received within the housing (e.g., portions 74, 134), the truck assemblies further including at least one end cap (142, 96) which engages with the lug shaft and retains the spring, the truck assemblies further including at least one retaining clip (104, 140) releasably associated with the end cap element.

It would have been obvious to one of ordinary skill in the art at the time of the invention to use an elastomeric cylindrical spring and associated mounting structure: holding splines, lug shaft, cap, etc. as taught by Kimmell in association with each pivotal wheel mount taught by Rue, for the purpose of ensuring that a centered configuration of the wheel mounts is returned to after a user executes a turn, which beneficially allows a

user to easily execute straight-line running (i.e., due to the restoring force of the spring) with minimal care.

The reference to Rue as modified by Kimmell, while teaching raked fork elements, fails to teach that the forks are constructed to have such a length or such an angle that the pivot axes pass through space outside the wheel diameters. Tipton teaches that it is well known in the application of raked-fork (24) spring-centered (52) casters (20) to a sport board (10, 12) to provide the length and/or angle of the raked fork (24) such that a pivot axis (at 22, 26) of the caster is located outside a diameter of a wheel (16). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the raked fork members of the sport board taught by Rue and modified by Kimmell with such an angle and/or length such that a pivot axis passes outside a wheel diameter of each of the pivoting wheel assemblies as taught by Tipton for the purpose of adjusting the effective moment arm for the pivot action of the assembly and/or for the purpose of adjusting and/or enhancing the stability of the pivot arrangement at high speeds.

Response to Comments

5. Applicant's comments, filed with the Request for Continued Examination and amendment, have been carefully considered. Initially, applicant asserts that the prior art, as applied against the previously pending claims, cannot meet all limitations of the claims as now amended. In that applicant has added limitations to the pending claims which are not clearly taught by the previously applied prior art, the examiner agrees. Note, however that Tipton teaches that it has been well known for some time to construct a spring return pivotable wheel assembly with a raked fork supporting the wheels such that the pivot axis of the assembly falls outside a wheel diameter. Applicant has asserted:

"...if one were to pose the question as to whether a skate board designer of ordinary skill, facing the wide range of needs created by developments in the field of endeavor, would have seen a benefit to upgrading Rue or Kimmel with the offset in-line wheels as currently claimed, it is highly doubtful that the returned answer would be affirmative."

Initially, the examiner notes that this assertion is not supported by any evidence, and applicant is reminded that the arguments of counsel cannot take the place of evidence in the record. In re Schulze, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965). Further, the reference to Tipton provides a clear showing that such a raked arrangement is both known in the art of two-wheeled skateboard design, and is deemed desirable at least for the reasons set forth by Tipton.

Conclusion

6. Any inquiry specifically concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 571-272-6701.

Any inquiries of a general nature or relating to the status of this application may be made through either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A response to this action should be mailed to:

Mail Stop _____
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450,

Or faxed to:

PTO Central Fax: 571-273-8300

F. VANAMAN
Primary Examiner
Art Unit 3618

/Frank B Vanaman/
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